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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/043,357	01/09/2002	Jennifer Kellam	ARBP064	6337
21912 7590 06/13/2011 VAN PELT, YI & JAMES LLP 10050 N. FOOTHILL BLVD #200 CUPERTINO, CA 95014				
EXAMINER JOHNSON, GREGORY L				
ART UNIT 3691		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

usptocorrespondence@ip-patent.com

Office Action Summary

Application No.

10/043,357

Applicant(s)

KELLAM ET AL.

Examiner

GREGORY JOHNSON

Art Unit

3691

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 November 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) _____ is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,5-11 and 13-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsman's Patent Drawing Review (PTO-940)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This Non-Final office action reopens prosecution based on the Pre-Appeal Brief Review decision, mailed January 6, 2011.

Claim Status

2. Claims 1, 2, 5, 8-9, 13, 16, 19-22, 25, and 28-30 are amended. Claims 3, 4, and 12 are cancelled. Claims 6-7, 10-11, 14-15 and 17-18 are original. Claims 23-24 and 26-27 are as previously presented. Claims 31-32 are new. Claims 1-2, 5-11 and 13-32 are pending.

Response to Arguments

3. Applicant's arguments, see Pre-Brief Conference request, filed November 18, 2010, with respect to the rejections of claims 1-2, 5-11 and 13-32 under 35 U.S.C. § 103(a) have been fully considered and are persuasive. Therefore, the rejections have been withdrawn. However, upon further consideration, new grounds of rejection are made.

Claim Objections

4. Claims 9 and 29 are objected to because of the following informalities:
 - Claim 9 recites "... *the* competition comprises ...". The amendment to claim 1 introduced this lack of antecedent basis. Appropriate correction is required.
 - Claims 29 recites "... wherein the at least one *identifier identifier* indicates ...". Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 21 and 30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. Regarding claim 21, the phrase "wherein the at least one identifier conceals a number of bidders in the first subset" renders the claim indefinite because it is unclear as to how "the at least one identifier is known to the bidders in the first subset" (as recited in claim 1), can also conceal the number of bidders (i.e. if something is concealed, how can it be known at the same time). Appropriate correction is required.

For examination purposes, claim 21 as been interpreted as reciting:

"wherein the at least one identifier conceals a number of bidders in the first subset
from bidders outside of the first subset"

8. Claim 30 is substantially equivalent to claim 21 and the same interpretation has been used. Appropriate correction is required.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. Claims 1-2, 5-9, 11 and 13-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grey et al., Pub. No. 20030041008 (hereinafter "Grey"), in view of Walker et al., Pub. No. 2006/0218076 (hereinafter "Walker").

As to claim 1, Grey teaches a method, comprising:

- receiving a plurality of bids from a plurality of bidders (§0028 and §0065-0066; which discusses participants submitting bids);
- using a processor to distinguish the bidders into at least a first subset and a second subset based on a parameter (e.g. qualification) (§0046 and §0097; which discusses checking a database to validate that a participant is qualified to participate in a private auction);

- assigning at least one identifier to the bidders in the first subset (§0083 which discusses participant identifiers being generated by auction administrator device),
- displaying, to each bidder in the first subset of bidders a lowest bid (§0120-0122 and §0157-0164; which discusses participants being provided with the status of an auction, such as the current best bid).

Grey does not explicitly teach the following element:

- wherein the at least one identifier is known to the bidders in the first subset and is neither assigned to nor known to the bidders in the second subset

However, Grey does explicitly disclose that a single administrator device may operate multiple auctions and that the auction administrator device generates participant identifiers for the participants of each auction. Grey also explicitly discloses the use of bid rules that include information identifying one or more rules that govern the bidding process of the auction identified by auction identifier. For example, bid rules may include rules specifying whether the auction is public or private. If the auction is a private auction, it might include a reference to another database specifying qualified participants in the private auction (§0041, §0077, §0083 and §0097).

As interpreted, Grey's private auction is equivalent to Applicant's "first subset of bidders." Key points: (1) auction participants receive participant identifiers; (2) there are multiple auctions in operation; and (3) there can be private auction(s) (i.e. confidential, secret, hidden, concealed, etc.)

Therefore, Grey implicitly teaches the above element.

Grey teaches that auction participants can obtain the status of an auction, such as the current best bid. Grey does not teach the following element; however, Walker discloses the element:

- displaying an identifier assigned to the bidder that submitted the lowest bid (¶0035; which discusses an auction manager maintaining information about current bidding status for each auction; current bidding status includes at least the highest bid price and an identifier of the highest bidder; and various ways that bidders can access the current bidding status).

It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include the aforementioned limitation as taught by Walker within Grey for the motivation to provide a method where auction participants can, in addition to receiving the current best bid, also receive the identifier of the bidder of the current best bid.

As to claim 2, Grey teaches:

- receiving a new lowest bid and displaying to each bidder in the first subset of bidders the new lowest bid (¶0026, ¶0112, ¶0120-0122, ¶0148, and ¶0157-0164).

Grey teaches that auction participants can obtain the status of an auction, such as the current best bid. Grey does not teach the following element; however, Walker discloses the element:

- displaying an identifier assigned to the bidder that submitted the new lowest bid (¶0035; which discusses an auction manager maintaining

information about current bidding status for each auction; current bidding status includes at least the highest bid price and an identifier of the highest bidder; and various ways that bidders can access the current bidding status).

It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include the aforementioned limitation as taught by Walker within Grey for the motivation to provide a method where auction participants can, in addition to receiving the current best bid, also receive the identifier of the bidder of the current best bid.

As to claims 5-9 and 11, Grey teaches:

- setting a first set of bid terms for the first subset and setting a second set of bid terms for the second subset, wherein the first set of bid terms and second set of bid terms are not identical (§0097 and Fig.3-4 & 6; via bid rules);
- wherein the setting comprises: establishing at least one of a reserve price, a historic price, a target price, time dependent variables, and bid strategies (§0097-0098);
- wherein the establishing comprises: providing time dependent variables including at least one of an opening time, a closing time, time extensions, and disclosures based on time (§0098 and Fig.3-4 & 6);
- wherein the parameter comprises at least one of regions, payment terms, delivery terms, contract length, contract volume, material, and qualification status (§0042, §0055, §0061, §0065, §0096, §0103, §0140 and §0151);

- wherein the parameter comprises regions, the competition comprises global and regional competition, and assigning at least one identifier comprises: allotting a range of numbers to each region; and giving a number to each bidder in the region (§0098, §0115, and Fig.3-4 & 6); and
- wherein the receiving comprises: accepting bids for a plurality of lots (§0048, §0116-0117 and Fig.3-4 & 6).

As to claim 13, Grey teaches a system, comprising:

- a database configured to receive and store bid information from bidders (§0075 and §0109-0112; via a bid database); and
- a processor configured to (Fig.1; via auction administrator devices; §0049, §0053 and §0069-0070):
- use a parameter (e.g. qualification) to distinguish the bidders into at least a first subset and a second subset (§0046 and §0097; which discusses checking a database to validate that a participant is qualified to participate in a private auction);
- assign at least one identifier to the bidders in the first subset (§0083 which discusses participant identifiers being generated by auction administrator device),
- cause a display of, for each bidder in the first subset of bidders a lowest bid (§0120-0122 and §0157-0164; which discusses participants being provided with the status of an auction, such as the current best bid).

Grey does not explicitly teach the following element:

- wherein the at least one identifier is known to the bidders in the first subset and is neither assigned to nor known to the bidders in the second subset.

However, Grey does explicitly disclose that a single administrator device may operate multiple auctions and that the auction administrator device generates participant identifiers for the participants of each auction. Grey also explicitly discloses the use of bid rules that include information identifying one or more rules that govern the bidding process of the auction identified by auction identifier. For example, bid rules may include rules specifying whether the auction is public or private. If the auction is a private auction, it might include a reference to another database specifying qualified participants in the private auction (§0041, §0077, §0083 and §0097).

As interpreted, Grey's private auction is equivalent to Applicant's "first subset of bidders." Key points: (1) auction participants receive participant identifiers; (2) there are multiple auctions in operation; and (3) there can be private auction(s) (i.e. confidential, secret, hidden, concealed, etc.)

Therefore, Grey implicitly teaches the above element.

Grey teaches that auction participants can obtain the status of an auction, such as the current best bid. Grey does not teach the following element; however, Walker discloses the element:

- displaying an identifier assigned to the bidder that submitted the lowest bid (§0035; which discusses an auction manager maintaining information about current bidding status for each auction; current bidding status

includes at least the highest bid price and an identifier of the highest bidder; and various ways that bidders can access the current bidding status).

It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include the aforementioned limitation as taught by Walker within Grey for the motivation to provide a method where auction participants can, in addition to receiving the current best bid, also receive the identifier of the bidder of the current best bid.

As to claims 14-18, Grey teaches:

- wherein the parameter comprises at least one of regions, payment terms, delivery terms, contract length, contract volume, material, and qualification status (¶0042, ¶0055, ¶0061, ¶0065, ¶0096, ¶0103, ¶0140 and ¶0151);
- wherein the first and second subsets comprise geographical areas for the regions, methods of payment for the payment terms, methods of delivery for the delivery terms, times for the contract length, capacities for the contract volume, types of material for the material, and at least one of approval and certification for the qualification status (¶0042, ¶0055, ¶0061, ¶0065, ¶0096, ¶0103, ¶0140 and ¶0151);
- wherein the at least one identifier comprises a number selected from a range of numbers assigned to the subset (Fig.3-4 & 6);
- wherein the database stores bid terms for each subset (¶0075, ¶0097-0098 and ¶0109-0112);

- wherein the bid terms comprise at least one of a reserve price, a historic price, a target price, time dependent variables, and bid strategies (§0097-0098).

As to claim 19, Grey teaches:

- wherein the processor is further configured to cause a display of, for each bidder in the first subset of bidders a new lowest bid (§0026, §0112, §0120-0122, §0148, §0157-0164).

Grey teaches that auction participants can obtain the status of an auction, such as the current best bid. Grey does not teach the following element; however, Walker discloses the element:

- displaying an identifier assigned to the bidder that submitted the new lowest bid (§0035; which discusses an auction manager maintaining information about current bidding status for each auction; current bidding status includes at least the highest bid price and an identifier of the highest bidder; and various ways that bidders can access the current bidding status).

It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include the aforementioned limitation as taught by Walker within Grey for the motivation to provide a method where auction participants can, in addition to receiving the current best bid, also receive the identifier of the bidder of the current best bid.

As to claims 20-21, Grey teaches:

- wherein the at least one identifier indicates a number of bidders in the first subset (Fig. 3-4 & 6);
- wherein the at least one identifier conceals a number of bidders in the first subset (§§0041, §§0077, §§0083 and §§0097; which discusses private auctions).

The limitations of claim 22, are substantially equivalent to the limitations of claim 1, and are therefore rejected on the same grounds.

The limitations of claims 23 and 24, are substantially equivalent to the limitations of claims 14 and 15, respectively, and are therefore rejected on the same grounds.

As to claims 25-27, Grey teaches:

- wherein the at least one identifier comprises a number selected from a range of numbers assigned to the first subset (Fig.3-4 & 6);
- further comprising setting, in each subset, bid terms (§§0075, §§0097-0098 and §§0109-0112); and
- wherein the bid terms comprise at least one of a reserve price, a historic price, a target price, time dependent variables, and bid strategies (§§0097-0098).

The limitations of claim 28, are substantially equivalent to the limitations of claim 2, and are therefore rejected on the same grounds.

As to claim 29, Grey teaches:

- wherein the at least one identifier identifier indicates a number of bidders in the first subset (Fig.3-4 & 6).

The limitations of claims 30 and 31, are substantially equivalent to the limitations of claims 20 and 21, respectively, and are therefore rejected on the same grounds.

As to claim 32, Grey teaches:

- wherein each of the identifiers included in the plurality of identifiers have a common characteristic (Fig.3-4 & 6).

12. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Grey and Walker as applied to claim 9 above, and further in view of Moderegger et al., Pub. No. 2002/0049642 (hereinafter "Moderegger").

As to claim 10, Grey teaches that the auction participants can be located in various geographic areas, such as different countries or regions (¶0084). Grey does not teach the following limitation; however, Moderegger discloses the limitation:

- wherein the displaying comprises: illustrating the lowest bids to allow a comparison regionally and globally (¶0014 and ¶0039; which discusses a comparison of bid prices emanating from a plurality of regions).

It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include the aforementioned limitation as taught by Moderegger

within Grey for the motivation to provide a method where auction participants and auction administrators can see a breakdown of the origin of bids within an auction.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GREGORY JOHNSON whose telephone number is (571)272-2025. The examiner can normally be reached on Monday - Friday, 8:30AM - 5:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ALEXANDER KALINOWSKI can be reached on (571) 272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/GREGORY JOHNSON/
Primary Examiner, Art Unit 3691